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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
087529,044	07/15/95	ECKHOUSE	S 06134/114

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QM41/0803

EXAMINER	
WINAKUR, E	
ART UNIT	PAPER NUMBER
3736	14

DATE MAILED: 08/03/98

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Office Action Summary

Application No.
08/529,044

Applicant(s)
Eckhouse et al.

Examiner
Eric Winakur

Group Art Unit
3736



☒ Responsive to communication(s) filed on May 28, 1998

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-19, 21-43, and 45-47 is/are pending in the application

Of the above, claim(s) _____ is/are withdrawn from consideration

☒ Claim(s) 39-43 and 45-47 is/are allowed.

☒ Claim(s) 1-13, 17-19, 21-25, 30-33, 37, and 38 is/are rejected.

☒ Claim(s) 14-16, 26-29, and 34-36 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 3736

1. The request filed on May 28, 1998 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/529,044 is acceptable and a CPA has been established. An action on the CPA follows.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claim 29, the term "the" should be inserted before "means" (line 3).
4. Claims 1 - 4, 10, 11, 21, 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Sand. Sand teaches a method for collagen treatment that includes optically illuminating a treatment area with laser radiation to achieve collagen shrinkage. The pulse duration and surface temperatures are controlled to provide collagen shrinkage without damage to adjacent layers. Sand teaches that the invention has applications throughout the body (column 1, lines 66 - 68), including cosmetic surgery (column 9, lines 1 - 3).
5. Claims 5 - 9, 12, 13, 17 - 19, 23, 25, 30 - 33, 37, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sand as applied to claims 1 - 4, 10, 11, 21, 22, and 24 above. Sand teaches all of the features of the claimed invention except the use of Nd:YAG and ruby lasers, light guides, the specific substances set forth in claims 5 - 9 and 23, and the specific structure of the laser and housing.

Art Unit: 3311

Without a showing of unexpected results or criticality it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Sand to use a Nd:YAG or ruby laser since it has generally been held to be within the skill level of the art to substitute equivalent elements in a device. Further, it would have been obvious to use light guides to deliver light from a light source to a treatment area since it was well known in the art to use light guides for delivery of optical treatments.

Sand teaches that cooling is achieved using a liquid or a gas, but does not teach the specific substances set forth in the claims. One of ordinary skill in the art at the time of the invention would recognize that the list of substances recited in Sand was not exhaustive and would further recognize that it would have been obvious to implement the method of Sand with any substance that would meet the cooling requirements of the system.

Although Sand does not teach the specific structure of the treatment system, it would have been obvious to one of ordinary skill in the art at the time of the invention to dispose the laser and control elements in a housing to provide protection to those elements and to make the unit more transportable.

6. Claims 39 - 43, and 45 - 47 are allowed.
7. Claims 14 - 16, 26 - 28, and 34 - 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3311

8. Claim 29 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. This is a CPA of applicant's earlier Application No. 08/529,044. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Winakur whose telephone number is (703) 308 - 3940. The examiner can normally be reached on Monday - Thursday from 7:30 AM to 5:00 PM. The examiner can also be reached on alternate Fridays.

Art Unit: 3311

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer Bahr, can be reached on (703) 308- 1066. The fax phone number for this group is (703) 308 - 0758.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308 - 0858.

Eric F. Winakur
Art Unit 3736
July 20, 1998

A handwritten signature in black ink, appearing to read 'JBahr', with a stylized, flowing script.

Jennifer Bahr
Supervisory Patent Examiner
Group 3700